IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1238 OF 2007.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri A.S.Jaiswal, Advocate for Petitioners.
Shri D.M. Kale, A.G.P. for Respondent/ State.
Shri A.H. Patil, Advocate for Respondent No.5.

CORAM : A.H.JOSHI AND
R.C.CHAVAN, JJ.

DATED : MARCH 28, 2007.

1. Heard learned Advocate Shri A.S. Jaiswal for the petitioners, learned A.G.P. Mr. D.M. Kale for State and learned Advocate Mr. A.H. Patil for Respondent No.5.

2. What is under challenge is initiation of proceedings under Section 88 of the Maharashtra Co-operative Societies Act, 1960. The allegations levelled in the charges against the petitioners have been narrated in Annexure-E to the petition which is annexure to the charge. This tabulated statement indicates the amount with interest and the persons, including directors of the Bank, who are considered to be responsible for causing loss to the Bank.

3. Learned Advocate Mr. Jaiswal tried to persuade this Court urging that any of the clauses referred to in Section 88 of the Maharashtra Co-operative Societies Act namely that it is not the case based upon an inquiry under Section 83 nor under Section 84 or based on report of audit and that therefore, action under Section 88 is not maintainable. According to the learned Advocate Mr. Jaiswal, it is not the case where the petitioners are found guilty of misapplication or have retained, or become liable or accountable towards any property of the Bank or guilty of misfeasance or breach of trust in relation to the society. He further contended that on the face of it action under Section 88 is totally misfitted. The learned Advocate Mr. Jaiswal further argued that the procedure of inquiry contemplated by Rule 72 of the Maharashtra Co-operative Societies Rules, 1961 would be wholly incompetent in these matters.

4. This Court finds that proceedings under Section 88 are of peculiar nature. The employees whose acts/omission/ acts of misfeasance or malfeasance have resulted in causing loss to the society while being involved in “the management thereof”, the scheme of Section 88 commences into play. The adjudication under Section 88 resulting into civil liability and

order passed therein is appellable under Section 152 of the Maharashtra Co-operative Societies Act.

5. Therefore, normal rule applicable to quashing of the civil or criminal proceedings would not in pari-materia be attracted to the prayer for quashing of proceedings under Section 88.

6. We, therefore, hold that the petitioner is facing proceedings which are duly made out. It would therefore at this stage be extremely premature to hold that no proceedings can be taken against them.

7. We, therefore, conclude that no interference is called for in the writ petition, the same is, therefore, dismissed.

JUDGE. **JUDGE.**

RR.